

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3052 of 1983

with

SPECIAL CIVIL APPLICATION No 3331 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 :No

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R J JOSHI

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 3052 of 1983

MR BB NAIK for Petitioner

MR VB GHARANIYA,AGP for Respondent No. 1, 2

2. Special Civil Application No 3331 of 1983

M/S NJ MEHTA ASSO. for Petitioner

MR VB GHARANIYA,AGP for Respondent No. 1, 2

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CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 18/03/98

ORAL JUDGEMENT

1. There was a disciplinary inquiry into the alleged misconduct of wrongfully including electricity bills for payment by the board. Two Junior Clerks and one Senior Clerk were found guilty and punishment of compulsory retirement was imposed. In all the three petitions, rule was issued and ad-interim relief against the order of compulsory retirement was granted and it is continued during all these 15 years. Shri Shrimali, Junior Clerk and Shri Joshi, Senior Clerk have already retired from service.

2. In the writ petition being Special Civil Application No. 2974 of 1983 filed by Shri Shrimali, the learned Judge (Coram: K.R.Vyas,J.) by his judgment dated February 9,1985, allowed the petition holding that out of the two charges. second charge in respect of larger amount was serious in nature and it was not proved and, therefore, only charge no.1 survived with respect to the inclusion of electricity bill of his own residence alongwith other bills of the Government and paid from the Government funds and as soon as this mistake was noticed, the amount was deposited. However, that charge no.1 was held to be proved by the learned Judge. As a consequence of finding regarding the second charge, which was held to be not proved by the learned Judge, the question of punishment was required to be reconsidered in light of reduced misconduct. The learned Judge held that the punishment of compulsory retirement was uncalled for and unjustified and, therefore, to substitute the punishment with respect to the remaining charge, the matter was required to be remanded to the disciplinary authority and the authority was directed to impose suitable punishment taking into consideration the gravity of the misconduct of proved charge no.1. Accordingly, the petition was partly allowed.

3. Mr.Gharaniya, learned AGP, on instructions from Shri A.R.Trivedi, Under Secretary, who is present in the Court, states that the judgment in Special Civil Application No. 2974 of 1983 has become final and the Government agrees to have the same order in this matter.

4. In view of the aforesaid position, both these petitions are partly allowed by quashing and setting aside the finding of guilt in respect of charge no.2 and setting aside the punishment of compulsory retirement and the matter is remanded back to the respondent authority to pass appropriate orders of lesser punishment in respect of charge no.1.

It may be noted that petitioner Shri Joshi has since retired and expired and his heirs are brought on record. Therefore, the question of punishment will have to be decided in light of these circumstances. The petitioner Shri Makwana is said to be still in service.

Rule is made absolute accordingly with no order as to costs.

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mhs/-